

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Rick Hill for Congress Committee,
and Gary F. Demaree, as treasurer

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MURs 4568, 4633, 4634 and
4736

**BRIEF OF THE RICK HILL FOR CONGRESS COMMITTEE
IN SUPPORT OF NO PROBABLE CAUSE**

The Rick Hill for Congress Committee, and Gary F. Demaree, as treasurer ("Committee") respectfully submit this brief pursuant to 2 U.S.C. § 437g(a)(3) and urge the Federal Election Commission ("FEC" or "Commission") to find no probable cause that the Committee violated either 2 U.S.C. § 434, 441a(f), or 441b. Accordingly, the recommendation of the Office of General Counsel should be rejected. Indeed, under any circumstances, the Commission should use its prosecutorial discretion and dismiss this case against the Committee.

I. STATEMENT OF THE CASE

The General Counsel's Brief of August 10, 2001 ("Brief") is unbalanced. It reflects an incomplete recitation of the law combined with a one-sided perspective of the facts. It ignores absolute and unrefuted sworn testimony from the Committee that it did not ask any third party to prepare issue advocacy, express advocacy, or phone banks on its behalf. In fact, the testimony from all sides is unequivocal that the Committee was blindsided by the advertising at issue in this case to the point where it feared losing the election because the advertisements addressed a subject that the candidate vowed not to raise during the election. But, disregarding this testimony, the Brief weaves a tale of what it calls circumstantial evidence in order to make a probable cause recommendation

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to the Commission. It is hard to imagine how, on the one hand, the General Counsel's Office could recommend that the Commission take no further action in MURs 4291, *et al.* ("MUR 4291") against the American Federation of Labor and Congress of Industrial Organizations, *et al.*, while at the same time recognizing that there was an extraordinary degree of interconnectedness between the AFL-CIO and the recipient committees, and on the other hand, recommend to the Commission that it pursue this case against the Committee. These two recommendations cannot be squared with one another. This matter must be dismissed.¹

II. APPLICABLE LAW

The General Counsel's Brief of August 10, 2001 purports to use the standard adopted by the Commission in the wake of *FEC v. The Christian Coalition*, 52 F. Supp. 2d 45(D.D.C. 1999). As noted in the Brief, that standard requires either an explicit request or suggestion by the candidate or an authorized agent of the candidate that an "expressive" expenditure be made, or "absent a request or suggestion of the candidate or an authorized agent, an expressive expenditure becomes 'coordinated' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's (1) contents; (2) timing; (3) location, mode or intended audience (e.g., choice between newspaper or radio advertisement); or (4) 'volume' (e.g., number of copies of printed materials or frequency of media spots)." Brief at 5. Curiously, the Brief in this matter

¹ Nor can this recommendation be squared with the Commission's decision to take no further action against the Coalition or any candidates in MUR 4624, also at the recommendation of the General Counsel. See General Counsel's Brief in MUR 4624, at pp. 45-47.

omits the further analysis provided to the Commission in MUR 4291. That General Counsel's Report states:

The court also discussed what it termed the "'insider trading' or conspiracy standard" of coordination. Specifically, the court addressed to what extent contacts or ties between an expender and a campaign, such as the fact that an individual worked for the expender and the campaign and was privy to non-public information, giving rise to an inference that there was coordination with respect to the expressive expenditures by the expender. *Christian Coalition*, 52 F. Supp. 2d at 89-97. The court found that such contacts or ties alone would not be sufficient to establish coordination unless there was also evidence of "discussion or negotiation" regarding the expenditures.

General Counsel's Report in MUR 4291 at 10. While the Brief does not so state it appears that the General Counsel's Office is relying on this "conspiracy standard" to advance its case.²

In addition, the Brief's recitation of the legal standard is further incomplete. While the Brief, in a footnote (at 4, n.5), acknowledges that the Commission passed a new regulation regarding Coordinated General Public Political Communications, the Brief does not identify the requirements of those regulations or the Commission's rationale behind those regulations.

² However, as seen below, all the information that Triad learned about the Rick Hill Committee was public information, not non-public information.

Specifically, in adopting the regulations, the Commission quoted from the court's admonishment that "the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between the candidates and corporations and unions." 52 F. Supp. 2d at 88-89, cited at 65 Fed. Reg. 76140 (December 6, 2000). Thus, the Commission adopted the following regulation:

An expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication –

- (1) Is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and
- (2) Is created, produced or distributed—
 - (i) At the request or suggestion of the candidate, the candidate's authorized committee, a party committee, or agent of any of the foregoing;
 - (ii) After the candidate or candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or
 - (iii) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee, a party committee, or the agent of such candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or

conferences regarding the value or importance of the communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

11 C.F.R. § 100.23(c).³ As shown below, nothing in the documents, and nothing about the contacts between the Rick Hill for Congress Committee and Triad rise to the level of coordination pursuant to this standard.

III. THE FACTS

The Brief's presentation of this case is misleading from the start. It suggest that the case was generated through the complaint of the Montana Democratic Party. However, the Montana Democratic Party came to the table as an afterthought. The truth, buried in a footnote (n.1), is that the Rick Hill for Congress Committee filed a complaint against Citizens for Reform immediately after it began airing advertisements in Montana with respect to Bill Yellowtail in October, 1996. The Committee was desperate to get the advertisements off the air and swore in its complaint to the Commission that the advertisements were not authorized by the Committee. Unfortunately, the Committee's plea for help was turned into a near five year investigation against the Committee.⁴ Moreover, unlike the AFL-CIO matter, where the General Counsel sought, and accepted

³ The regulation does not use the term "expressive coordinated expenditure," but replaces it with "general public political communication" as defined in 11 C.F.R. § 100.23(e)(i).

⁴ The General Counsel's Brief suggest that Citizens for Reform also paid for phone banks in Montana. The Committee was not aware of such phone banks until the General Counsel's staff earlier this year represented to the Committee in the course of depositions and interviews of the candidate and other witnesses that Citizens for Reform had paid for phone banks. We note, however, that the Hill Committee raised sufficient funds to run its own phone banks.

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at face value the Committees' denials of any contact with respect to the AFL-CIO's communications to the general public, the General Counsel's Brief proposes to reject not only the Committee's denial of any communication with Citizens for Reform in its complaint to the Commission⁵, but its repeated denials in response to the Commission's subpoena, as well as the denials of each of the Committee personnel and agents as well as the personnel and agents of Triad with whom the General Counsel's office spoke or deposed.

A. The Real Facts

The facts from the Committee's perspective are straightforward. Sometime in September, 1996 the Committee was contacted by a representative of Triad who set up a meeting between Carolyn Malenick and the Congressman.⁶ At that time, Triad explained that it was

a newly formed national donor-based organization whose participants from the business world are seeking to maximize their political contributions to GOP candidates. It's not a PAC or a committee. They hope to build a network of contributors to counter the union's donor network for Democrats.

Committee Response to Subpoena, Bates Stamped Document 1. Mr. Hill met with Triad on a prearranged trip to Washington. The meeting lasted about ½ hour. Hill Deposition at 107. Mr. Hill's impression when he left the meeting was still that Triad was trying to

⁵ At the time of the complaint, the Committee had no idea that Triad was in any way affiliated with Citizens for Reform. Moreover, the Committee only knows this to be a fact because of the Commission's statement that it is so and evidence provided to the Committee upon request from the General Counsel's office.

⁶ The Brief states (at 11, n.11) that, in fact, the Committee was contracted early in 1996 by Jason Oliver, but Mr. Oliver could not identify who, if anybody, he spoke to at the Committee, and the Brief does not offer any substantiating phone records.

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determine if it was going to recommend that individual contributors make contributions to his campaign, *id.* at 115, and that Triad would send someone to Montana to audit his campaign to assist in this determination. *Id.* at 116. That meeting was scheduled for September 24 when Mr. Rodriguez of Triad came to the Hill campaign offices and spoke to various individuals.⁷ About a month later, in late October, the Hill campaign did, in fact, get at least one contribution from a Triad related individual, and possibly up to five such contributions.⁸ Committee Subpoena Response, Bates Stamped Documents 4-6.

Then, in late October, when Mr. Hill was either dead-even or ahead in the polls (depending on the poll), an organization called Citizens for Reform starting airing ads regarding Bill Yellowtail. The Committee had never heard of Citizens for Reform and the Committee had no idea that these ads were going to be aired. The Committee did everything in its power to stop the ads because Mr. Hill had pledged not to raise Mr. Yellowtail's past history in the Campaign, and even though a third party was doing these ads, the uninformed public would clearly attribute the ads to the Hill Campaign. Thus, the campaign found out who Citizens for Reform's lawyer was, asked that Citizens for Reform cease and desist, called on the television stations to stop airing the ads, and filed

⁷ The Brief states that there were several phone calls between Rodriguez and Company between September 12 and the date of the meeting on September 24. Meetings don't set themselves up. It would be perplexing if there were no such phone calls.

⁸ Meredith O'Rourke testified that Triad often gave a heads up call to committees when contributions by Triad clients were being made to contributors. O'Rourke Deposition at 503, possibly explaining additional calls to the Committee in October.

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a complaint with the FEC. Mr. Hill was “concerned about what the consequences of those ads would be” fearing that they could be “perilous” to his campaign. Hill Deposition at 161, 162. See also Akey Deposition at 181 -182, and 184 (“I thought that it (the ads) would potentially be the one thing that could sink the campaign.”) The television stations complied and stopped the ads. Nobody within the Hill organization ever knew that phone banks were done by Citizens for Reform until the Commission told them that this was so. See e.g. Hill Deposition at 166; Akey Deposition at 188. Moreover, not until some years later did the Committee learn that Citizens for Reform was in any way associated with Triad.

B. The Facts Not Adequately Addressed in the General Counsel’s Brief

There are numerous exculpatory facts that the Brief simply omits or minimizes, and there are numerous other facts that the Brief seems to misrepresent or from which the General Counsel’s office draws unsubstantiated conclusions. These facts are as follows:

- Neither Triad nor Citizens for Reform “exposed” Bill Yellowtail. Rather, Bill Yellowtail’s past became a matter of public discussion during the primary debates when one of Bill Yellowtail’s Democratic opponents “exposed” allegations regarding Mr. Yellowtail’s wife beating, failure to pay child support, and burglary conviction. It was at that point, in February of 1996, when Mr. Yellowtail’s past “became a subject of considerable national attention.” Hill Deposition at 173-174.
- The Hill campaign had a specific understanding of what Triad was -- an organization created to make recommendations to its members as to which

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federal candidates to support with contributions and that the recommendation process entailed an interview with the candidate and the candidate's campaign to determine the candidate's viability. See Hill Response to Subpoena; Hill Deposition; Akey Deposition. This was precisely what Triad told those candidates with whom it spoke and met. See Oliver Deposition at 30, 94; Rodriguez Deposition at 41, 49, 124.

- At the time of the audit of the Hill Committee, Carlos Rodriguez was unaware that Triad would be managing issue advocacy for any issue advocacy committee. Indeed, even the stipulation cited by the Brief indicates that there was no arrangement or agreement between Triad and Citizens for Reform before September 26, 1996, days after the Triad audit of the Hill Committee. Moreover, the Hill Committee had no reason to ask Triad to do any ad since Triad's function, as explained to it was to recommend to Triad's clients candidates to whom the clients should make a contribution, not to engage in issue advocacy.⁹
- While the Brief asserts without citation (at 13) that Carlos Rodriguez performed a two day audit of the Committee, the Committee records show that Mr. Rodriguez visited on September 24. This is consistent with Mr.

⁹ Even Jason Oliver testified that he had no idea that Triad would manage any issue advocacy campaigns at the time he was making the phone calls so heavily relied upon in the General Counsel's Brief. Oliver Deposition at 119.

Rodriguez's testimony that he visited the Committee on September 24, and that his audits generally lasted approximately 1 hour, not 1 ½ days.¹⁰

- The General Counsel's Brief leaves one with the impression that Mr. Hill's campaign pledge not to use Mr. Yellowtail's personal history was a constant source of discussion within the campaign. Brief at 18-19 ("the evidence shows that his campaign continued to debate the desirability of using these ads as campaign issues,") relying on Congressman Hill's Deposition. This was simply not so. Congressman Hill was quite clear when he said - "That was the clarification I was trying to make with respect I think to all of them. I think those that opposed I think were opposed to my decision to take it off the table, as opposed to advocating we use them." Hill Deposition at 72. Further, as Larry Akey testified, once the candidate took the pledge not to discuss those issues, they were simply "off the table." Akey Deposition at 162. See also id. at 116.¹¹

¹⁰ Mr. Hill did have a fuzzy recollection that he may have seen Mr. Rodriguez around the Triad offices for a 1 ½ days, but this is not corroborated by any of the other testimony, nor by Mr. Hill's own schedule. See Subpoena Response, Bates Stamped Document 2; Hill Deposition at 140.

¹¹ Mr. Hill would also have testified to this fact had he been asked.

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- Contrary to the Brief's assertion that "Mr. Yellowtail reportedly was leading Mr. Hill in the polls prior to the CR advertising campaign . . .," and that "Mr. Hill won with 50% of the vote, as opposed to 46% for Mr. Yellowtail and 4% for a third party candidate" (Brief at 22), an independent poll conducted October 18-21 showed that Mr. Hill had actually taken the lead in the polls, 41%-36% prior to the Citizens for Reform ads running. See Exhibit 1. Moreover, Congressman Hill did not win by 50-46-4 as alleged in the Brief, but by a 9 point margin over Mr. Yellowtail, 52-43-4, confirming that he was running away with the election prior to the ads ever hitting the air. Michael Barone and Grant Ujifusa with Richard E. Cohen, The Almanac of American Politics (National Journal 1997), at 859. Erring with regard to such a basic fact undermines the Brief's credibility.

C. Other Relevant Testimony From the Triad Depositions Obtained Without The Benefit of Cross Examination

Jason Oliver's Deposition

- The General Counsel's Brief (at 10-11) seems to suggest that Jason Oliver obtained information from each campaign exclusively by contacting the campaign and asking the campaign a series of questions. However, Mr. Oliver testified repeatedly that he got information from many sources other than the campaigns including periodicals, "newspaper accounts, Internet, roll call, the typical – public sources that you don't normally see in California we would get them faxed to us." Oliver Deposition at 33. See also id. at 68, 86, 107, 113. As previously noted, Mr. Yellowtail's past was a matter of great

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national attention by February of 1996. Moreover, these pre-audits were prepared by Mr. Oliver in advance of any on-site visits indicating that many issues were identified by Mr. Oliver without any discussion with the campaigns. See also Rodriguez Deposition at 135, 247.

- When asked if Triad had been asked to run issue ads, Mr. Oliver stated “We were never asked to run issue ads to my knowledge.” Id. at 116 (emphasis added). Moreover, Mr. Oliver had no specific recollection of calling the Rick Hill Campaign with respect to what issues it might like if an organization were going to make issue ads, but rather admitted that he was basing his testimony on generalities. Id. at 131, 132. In fact, Mr. Oliver later clarified that “[a]s I said earlier about all the house campaigns, all the information was obtained through – with the exception of Montana – through the telephone set – the telephone calls I referred to. Id. at 194 (emphasis added).¹² Moreover, as noted earlier, even when making these calls, Mr. Oliver also testified that he was unaware that Citizens for Reform would be doing any advertising on behalf of any candidates. Id. at 119.
- When asked whether he knew the basis for Triad’s recommendations as to which districts Citizens for Reform should be active in, Mr. Oliver responded “I don’t know what the full basis was of what went into Carolyn’s determinations. I know part of it was the information I obtained in the audit

¹² This is one in a series of examples of misrepresentations in the Brief about the testimony of the witnesses.

process.” *Id.* At 39. Further elucidating on how the districts were chosen, Mr. Oliver stated that “Basically if it was a race where there was a clear contrast between the various candidates that were in the race, I know that was in a determination, the information that was obtained in the audits such as what are the top three issues you’re going to run on? What are the top three issues your opponent’s going to run on? That was a factor.” *id.* at 40 (emphasis added.)

- When asked for specific recollections about preparing scripts, Mr. Oliver testified that the only one he had a specific recollection of was the Montana issue education ad and that “I actually asked Carlos for permission to write that one because I really – from having done the audits, had no respect for the candidate that was running in there, and I thought the people of Montana had a right to know that they had an opportunity not to elect someone who took a swing at his wife.” *Id.* at 103. This testimony refutes any inference that the Hill campaign asked for the ad or coordinated regarding its content, but indicates that Triad and Citizens for Reform took it upon themselves to create an ad addressing Bill Yellowtail’s past.¹³ Further, when specifically asked whether he knew how Montana was selected for an issue ad, Mr. Oliver did not testify that it was because the Hill campaign asked for such an ad, but rather because the Hill campaign was in the top tier of districts selected by Triad as a target. *Id.* at 104. This top-tier was created by Triad in relation to

¹³ This is corroborated by Ms. O’Rourke’s testimony that the Hill ad was run because it was an issue of import to Triad clients. O’Rourke Deposition at 495.

its primary function, which was to suggest to Triad clients races in which they may want to contribute.

- Finally, when asked what kind of feedback that Triad got from the campaigns on the issue ads, Mr. Oliver stated quite explicitly “The only thing I ever heard, and it wasn’t directly to me, was that Hill was pissed-off about whoever had done it in his district because the tone did not come across as he would have liked it to come across because it was an issue he wasn’t going to touch in the campaign. So he was not very happy about it.” Id. at 145. See also Rodriguez Deposition at 326 responding to a similar question specifically regarding the Hill campaign saying “I believe they were not pleased.” This is telling evidence that the Hill campaign did not request the ads or coordinate with regard to their content, never mind the other factors.

Carlos Rodriguez’s Deposition

- Mr. Rodriguez testified that he did not ask campaigns whether issue education ads would be useful in their districts. Rodriguez Deposition at 303.
- Further, when discussing the issues related to Mr. Yellowtail, Mr. Rodriguez stated repeatedly that “It was widely known and documented.” Moreover, he testified that “I don’t know that I discussed it with him (Rick Hill) at any length.” Id. at 311. See also id. at 289.¹⁴

¹⁴ The Brief discounts this testimony simply because Mr. Rodriguez made some generalizations with regard to contacts with the campaigns.

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- When asked where he obtained the key issues information on the Triad Audit Report for Rick Hill, Mr. Rodriguez testified that “It would have been either from the campaign or it would have been from Jason in terms of his background research,” id. at 314, again confirming that public documents could have been the source of the information.¹⁵
 - When the General Counsel’s office asked specifically “And in terms of the needs listed on the top of the second page -- . . . where did you get that from” Mr. Rodriguez’s answer was simple and direct “**Myself.** Those are conclusions.” Id. at 314 (emphasis added). This refutes any “inference” that
 - the campaign requested that Triad run ads. Moreover, when asked whether he discussed the needs section with the campaign, Mr. Rodriguez testified “**Not likely.**” Id. at 315 (emphasis added).
 - When asked whether the work that he was doing for Triad and specifically whether the closeness of the congressional races had any influence on the selection of the media markets for the Citizens for the Republic Education Fund and Citizens for Reform issue ads, Mr. Rodriguez was quite explicit – “No.” Moreover, he testified that Triad did not get involved in the issue education project until all of the audits were complete.” Rodriguez Deposition at 281, 312-313 (“We didn’t know we were doing issue education advertising, I don’t think, in September.”). This testimony was corroborated

¹⁵ This was consistent with Mr. Rodriguez’s testimony from throughout his deposition that many of the key issues identified on the audit reports were from the pre-audit briefing papers that he got from his office. See, e.g., Rodriguez Deposition at 364, 371.

by Mr. Oliver, as discussed above, and is further corroborated by the fact that it was not until after the Hill audit that Triad entered into a Management Agreement with Citizens for Reform. General Counsel's Brief at 8.

- When asked how the media markets were selected, the General Counsel's Brief discounts Mr. Rodriguez's response that "By and large . . . where the unions were doing there work." "[I]f the unions were there, we needed to have a presence." *Id.* at 285. While the Brief did not find this to be a credible response, the General Counsel's Report in MUR 4291 recognized that the AFL-CIO ran ads "closest" to the election in the Montana-AL district. General Counsel's Report in MUR 4291 at 14-15, and n.10. Moreover, the evidence in the case was that the Montana-AL district was not on the original target list of Citizens for Reform. Rather, Montana-AL was added to the list at a later date. Rodriguez Deposition, Exhibit 22.
- Further, Carlos Rodriguez testified that he did not recall having made the decision to add the Montana-AL race to the list of races that issue ads were to be run in, *Id.* at 290. On the other hand, Meredith O'Rourke testified that the Yellowtail ad was run because "[b]ecause it was an issue that was important and our clients were interested in it." O'Rourke Deposition at 495. Ms. O'Rourke specifically identified a Triad client interested in the issue of spousal abuse. *Id.*
- When asked whether the issues were derived from the audits, Mr. Rodriguez was unequivocal. "Oh, no. I want to make that clear. They did not get the

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audit reports from us. It wasn't relevant because the audit reports, as you well know having studied them, had a lot to do with the mechanics of the campaign, particularly a congressional campaign. And it was not relevant to the issues that were being raised by these two issue education committees. So not only was it not relevant, it was not given to them." Id. at 299-300 (emphasis added).

- Finally, Mr. Rodriguez testified unequivocally, just as did each Triad person identified in the General Counsel's Brief, that the ads were not produced at the request or suggestion or authorized by any candidate, id. at 401-402, that there was no discussion regarding the content, timing, location, mode, intended audience, the volume of distribution, the frequency of placement of the ads or communications, id., that there was no discussion with any candidate regarding Citizens for Reform, and that no candidate or campaign committee had any idea that Carlos Rodriguez may have been involved in any organization that might be considering doing issue ads.

Meredith O'Rourke's Deposition

- The General Counsel's Brief states that "Mr. Hill voluntarily brought up Mr. Yellowtail's history of spousal abuse." Brief at 12. At no time did Ms. O'Rourke state that Mr. Hill "voluntarily" brought up this information. In fact, her testimony was hazy. For instance, in response to the question – "Do you know if Mr. Hill was planning to make the fact that his opponent hit his wife an issue in the campaign?" Ms. O'Rourke answered "I don't know. I

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don't remember that coming up. **I just remember that fact coming up and it just stuck in my head.**" O'Rourke Deposition at 491 (emphasis added).

Ms. O'Rourke's testimony needs to be taken in context. Jason Oliver had already prepared charts on all the campaigns and had already performed research by the time of Triad's first interview with Rick Hill. The fact that Mr. Yellowtail had some issues in his past was a matter of public knowledge and had been raised by one of Mr. Yellowtail's Democratic opponents in the primary, well before these meetings. Thus, it is likely that Mr. Yellowtail's background was well known to Triad before Rick Hill or his campaign had ever heard of Triad and that Triad could have asked Mr. Hill about these allegations rather than Mr. Hill having raised the issue "voluntarily".¹⁶

- When asked "Before doing the CR and CREF ads did TRIAD make any effort to find out to find out what issues the campaigns would like to see mentioned in those ads," Ms. O'Rourke responded "No. No." Id. at 491.
- Finally, when asked whether any candidate was aware of the existence of Citizens for Reform prior to running the issue ads, Mr. O'Rourke again responded "No." Id. at 528.

¹⁶ The Brief's characterization of Congressman Hill's testimony on this point also is inaccurate. The Brief (at 12) says that "Mr. Hill also testified that he did not discuss either Bill Yellowtail or the issue of spousal abuse during the meeting." The Questions posed were as follows: "Do you recall this woman discussing Bill Yellowtail with you at the meeting?" and "Do you recall discussing with this woman the issue of spousal abuse?" Congressman Hill answered "No" to both questions, meaning he didn't recall. Hill Deposition at 112-113. This is not the same as saying he didn't do it – just that he didn't recall. This is an example of the Brief being imprecise which can lead to misrepresentations and inaccurate conclusions.

IV. ANALYSIS

Much of the Brief's recitation of the legal standards relate to the status of Triad, and the Brief's alternative legal conclusions also relate to Triad's status as either a political committee or a corporation. The Committee expresses no view on these issues in that they are simply irrelevant to the Committee. The only issue relevant to the Committee is whether it coordinated with Citizen for Reform, or even Triad, with respect to Citizens for Reform's advertising in Montana in October, 1996. It did not, pure and simply.

The simplest explanation of why no such thing happened is that any advertisements in the general election regarding Bill Yellowtail's personal behavior could have had the effect of completely undermining Rick Hill's credibility with the electorate, and could have caused him to lose the election.¹⁷ This was true even if a third party ran such ads because the ads would undoubtedly be attributed to Mr. Hill, just as the General Counsel's Brief has done here. These ads were a recipe for disaster.¹⁸ This is why the Committee did everything in its power to stop the ads, and to its knowledge the ads ran only in one market for only a brief period of time because the stations acceded to the request of both the Hill and Yellowtail campaigns to take the ads off the air.

Did Rick Hill meet with representatives of Triad? Yes. Did members of Rick Hill's campaign staff meet with Triad? Yes. Were the telephone calls from Triad to the

¹⁷ The Hill campaign is certainly happy that it's worst fears did not come to fruition.

¹⁸ Even before he was the nominee in the general election, Mr. Hill made a pledge not to raise Mr. Yellowtail's past as a campaign issue. And as Congressman Hill testified before the Commission, he felt confident that he could beat Mr. Yellowtail on the issues, not on his past behavior.

Hill Committee? Yes. Is it possible that the Hill Committee sent press clips about Bill Yellowtail to Triad? Yes. Does this mean that the Hill Committee coordinated with Triad with respect to these ads? No.

Rick Hill and the Hill Committee met with hundreds of people during the course of the campaign. The Committee responded to calls from hundreds of people during the course of the campaign. The Committee gave information to hundreds of people during the course of the campaign. Triad was no different than any other organization that came through the door of the Hill Campaign and nothing in the testimony suggest or evidence that it was.

Not one single person testified or provided evidence that the Citizens for Reform had aired ads on behalf of the Committee "at the request or suggestion of the candidate, the candidate's authorized committee or any agent for the candidate." 11 C.F.R.

§ 100.23(c)(2)(i). In fact, every single person testified to the contrary. Jason Oliver testified that no campaign requested that a third party ad be done and that the Hill Committee, in particular, was angry that someone had run these ads. Carlos Rodriguez testified that no campaign requested that an ad be done and that the Hill Committee was not pleased about these ads. Meredith O'Rourke testified that no campaign asked that an ad be done. The Campaign filed the very complaint that started this investigation and swore that they were not authorized by the Campaign. Congressman Hill testified that neither he nor anyone associated with his campaign asked that an ad be done. And Larry

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Akey testified that he did not ask that an ad be done.¹⁹ Whatever else the documents may show they do not show that the Hill Committee requested that an ad be done.²⁰

But what about the documents? The only truly relevant document, and the one that the Brief puts its greatest reliance on, is Carlos Rodriguez's audit report. Here again, Mr. Rodriguez testifies that a "3rd party to expose Yellowtail" under "Needs" was his personal conclusion. Jason Oliver's interpretation that this meant that someone on the Hill campaign had asked for a 3rd party to expose Yellowtail is nothing but an unsubstantiated and incorrect conclusion that would never stand up to a careful examination. Jason Oliver wasn't at the Hill audit. It is not even clear that Jason Oliver saw the "notes" of the Hill campaign audit or that there were "notes" as opposed to Mr. Rodriguez simply dictating an audit report so Jason Oliver can't possibly know that someone on the Hill Committee asked for a third party to expose Yellowtail.

¹⁹ The General Counsel's staff also conducted an extensive interview on August 28, 2000 with Charmaine Murphy, the Campaign's manager at the time the ads were run. Ms. Murphy testified that the campaign thought the ads were in poor taste, that everyone was appalled by it, and that Larry Akey was not at all happy about the ads. Moreover she stated his reaction was "absolutely not that he knew it was coming." The General Counsel's Brief apparently omits this testimony because it undercuts its theory of coordination.

²⁰ The Brief twice references (at 7 and 25) a Triad Stipulation that its audit's typically included the campaign's self-assessment of its specific needs. Even if this is so, this does not amount to a request that Triad meet these needs.

Moreover, in this case, Mr. Rodriguez testified specifically that he drew the conclusion that the campaign needed a 3rd party to expose Yellowtail, not that the campaign had identified such a need. Even under a worse case scenario, which is the scenario proposed on the Brief, let's assume Carlos Rodriguez shared his view with the Committee that it needed a "3rd party to expose Yellowtail," nothing suggest that the Committee responded to this advice by saying "oh yes, Triad, and you are that 3rd party." This is inconceivable on two levels. One, Triad held itself out as, and the Committee understood Triad to be, representing individuals who were trying to decide how to allocate their contributions to candidates. Triad never represented itself as an organization in the business of doing issue ads or related to any such organization. Two, the campaign knew that any ad regarding Yellowtail's past, in the face of a pledge not to raise such an issue, had the ability to derail the campaign. Had Rodriguez suggested this to the campaign, it would have been rejected.

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Moreover, the Brief does not explain why Mr. Rodriguez's testimony about this is "self-serving and should not be credited." Brief at 26. To the contrary, it is completely credible that Mr. Rodriguez would have been offended about allegations of spousal abuse. Wouldn't you? Moreover, it is completely credible that when the Hill campaign affirmed for Mr. Rodriguez that it was not going to raise Mr. Yellowtail's past history that Mr. Rodriguez would have taken it upon himself to decide that a 3rd party needed to expose Yellowtail since Hill wasn't going to do it (to the extent "expose" is an apt description). Further it is completely credible that, as Ms. O'Rourke testified, that one of Triad's clients was interested in this issue and that is why, at the 11th hour, the Hill Campaign was added to the list of campaigns where an issue ad was going to be done. And perhaps this explains why the chart that the Brief so heavily relies upon, Oliver Exhibit 5, has a "NO" in the column next to Rick Hill and no funds identified as having been spent on Rick Hill – in other words Citizens for Reform had no plans of doing an ad for Rick Hill. Moreover, it's completely credible that the ads were done in response to AFL-CIO ads which themselves ran very close to the election. All of this is a completely credible alternative theory of what might have happened based on the testimony and documents. But the Hill campaign can not tell you how these ads came to be aired because it does not know. It only knows that it did everything in its power to stop the ads.

Thus, there is no evidence that there was "substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee . . . or the agent of such candidate or committee, regarding the content, timing, location, mode,

intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration.” 11 C.F.R. § 100.23(c)(2)(iii)

(emphasis added). Not even the General Counsel’s Brief’s unfounded assertions suggest that this criteria has been met. Rather, the Brief’s analysis only raises the issue of content, but does not address any of the other criteria. Brief at 23. Moreover, when it comes to content, the testimony is quite consistent that the Hill Campaign was upset about the Yellowtail ads.

In sum, just as the Commission acknowledged in MUR 4291 that, despite the extraordinary degree of connectedness between the AFL-CIO and the recipient committees in that case, there was no evidence of coordination (despite the fact that the General Counsel’s office didn’t even bother to look at thousands of pages of documents), and just as the Commission acknowledged in MUR 4624 that there must be substantial discussion or negotiation over an expressive communication’s content, timing, location, volume, etc., which was denied by the parties in that case and to which the documents could not meet the test, the Commission should assess this case similarly and find that there is no probable cause to believe any violation occurred. Any other decision would not only be an abuse of prosecutorial discretion and inequitable, but it would be wrong.²¹

²¹ We note that the Brief at 9 states that Citizens for Reform sponsored 19 Triad – managed advertising campaigns immediately prior to the 1996 congressional elections. Has the General Counsel’s Office recommended probable cause against all 19 committees? We doubt it. This is not to suggest that the Committee wants the General Counsel to do so, but only that it’s isolation of the Hill Campaign cannot be justified and is certainly not equitable.

V. **CONCLUSION**

For all of the above stated reasons, the Commission should find no probable cause to believe that the Rick Hill for Congress Committee violated either 2 U.S.C. § 434, 441a(f) or 441b.²²

Respectfully submitted,



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and Gary F. Demaree,
as Treasurer

August 27, 2001

²² The idea that the Committee could have "knowingly accepted" an in-kind contribution from Citizens for Reform when it publicly called for the ads to be taken off the air and filed the complaint against Citizens for Reform is simply illogical.

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EXHIBIT 1

Law, from the lowest Oct. 10 challenge state laws that regulate campaign contributions, campaign advertising and political libel. The anti-abortion organization claims the laws interfere with their rights to free expression.

Shanstrom's ruling preserves these constitutional claims for later resolution. His decision on Thursday merely rejected the group's request for temporary relief from the laws while the balance of the case proceeds.

Shanstrom reasoned Montana Right to Life had failed to show that it would suffer irreparable harm if the state was allowed to continue enforcing the laws.

The judge also said an injunction could impact Initiative 125, the measure that would ban corporate contributions to ballot issue campaigns.

"An injunction by this court could likely confuse the issue for voters or influence voters," he said.

Rehberg gaining, Hill now leading, MSU poll finds

HELENA (AP) - Republican Dennis Rehberg may be narrowing the gap in his bid to unseat Democratic Sen. Max Baucus and Republican Rick Hill has an apparent lead over Democrat Bill Yellowstone in the U.S. House race, a new poll shows.

The Montana State University-Billings survey taken last weekend indicated Baucus had 45 percent of the vote and Rehberg had 38 percent. Two other independent polls taken within the last month both showed Baucus with a wider lead of 51 percent to 37 percent.

The MSU poll also showed Hill slightly leading Yellowstone, 41 percent to 36 percent, in contrast to earlier polls indicating the race was closer to a dead heat.

The MSU poll, conducted Oct. 18-21, questioned 108 registered voters by telephone. The survey's margin of error could mean the results vary by plus or minus five percentage points.

The governor's race was excluded from the poll results because of the death Wednesday of Democratic candidate Chet Blaylock. However, all previous surveys have shown Republican incumbent Marc Racicot with about a 70-point lead.

In the Senate race, the poll indicated Reform Party candidate Becky Shaw has about 5 percent, and Stephen Heaton, the Natural Law Party nominee, has less than 1 percent. Eleven percent remain undecided.

The poll found Rehberg trailing by a smaller margin than previous polls, even though 37 percent of voters believed Rehberg is waging the most negative campaign. Eleven percent said Baucus had the most negative campaign.

In the race for Montana's single U.S. House seat, Natural Law candidate Jim Brooks got 9 percent and a fifth of voters were still undecided.

Revelations about personal problems may be hurting Yellowstone more than Hill, the survey found.

While 9 percent said they were troubled by disclosures about Hill, 21 percent said they had concerns about incidents in Yellowstone's past. Seventeen percent said they were bothered by personal actions of both men, and 24 percent said they were troubled by none of the information.

Twenty-nine percent were undecided.

Incumbent Rep. Kottel in tough fight with

By PETER JOHNSON
Tribune Staff Writer

Democratic Rep. Deb Kottel could face a tough re-election race in House District 45 in north-central Great Falls.

Republican challenger Bob Balyeat is campaigning very aggressively, with lots of yard signs and door-to-door campaigning in the district of shaded trees, older homes and many younger families.

The district leans Democratic, but Republicans say the right candidate, like Susan Good in 1988, can win here. Democrats say Kottel is working hard, too, and keeps in touch with constituents through newsletters.

Balyeat, 49, who runs a business distributing his wife's art, is conservative on social and economic issues. He is a strong advocate of reducing the size of government through privatization of services and other means.

Kottel, 44, a University of Great Falls paralegal professor, is considered liberal on some issues but successfully carried three anti-crime bills in her first term. If re-elected she would work on bills protecting seniors and others from telephone scams and expanding the use of community-based correction facilities.

Both candidates live outside the district, which is legally permitted but can be a campaign issue.

Balyeat lives west of Great Falls, but grew up in the district. Kottel lives in southwestern Great Falls but says the middle-class working neighborhoods of HD45 suit her political philosophy better.

Here are the candidates' responses to the Tribune's questions:

Tag reform needed?

Kottel: The property-tax system needs to be overhauled. Currently the system is not accurate or current on property valuation. Last session we reduced the business property tax over the next five years. This progressive reduction will need to be followed closely to see if it spurs more revenue as expected through growth. If this does not happen, we will face a serious funding shortfall.

Balyeat: Government's major role is to maintain an environment in which people can live and prosper through individual initiative. This can be achieved only when government restrains its authority to tax and spends less. We should reduce personal property taxes to create jobs, freeze real-estate tax increases to prevent increases due to reappraisals; permit families to file a joint tax return by eliminating the existing penalty, and eliminate nuisance taxes that cost more to collect than they produce.

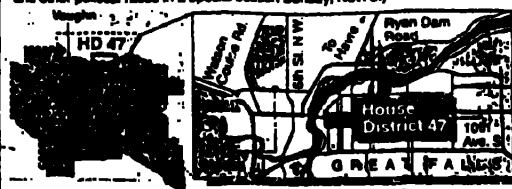
Job creation?

Kottel: State government can get out of the way of small businesses. We need to protect the Coal Tax Trust Fund so loan money will be available to assist new businesses moving into the state. Funding research for value added production of state resources is a way to create positive economic development in the state.

Balyeat: We must raise the amount of income Montanians keep after taxes. This will not be accomplished through a large bureaucracy, but with a liberated private sector. The marketplace is the most efficient allocator of resources. Government must cooperate with the private sector to retain and expand

Local legislative races

Chadwick County candidates for contested seats in the Montana House and Senate have provided written answers to a series of questions sent to them by the Tribune. Here's a look at House District 47. (The Tribune will publish summaries of these and other political races in a special section Sunday, Nov. 3.)



existing businesses, and help establish new business by eliminating unnecessary regulation.

Budget trimming?

Kottel: Program evaluation and management is essential. State government can become more efficient through data management. The state needs to invest in an integrated data-management system. Such a system will increase cash flow through speed of collections as well as accuracy of the collection system.

Balyeat: We must privatize many government services to reduce costs and make government more efficient.

Government programs should be restricted to those that can't be provided by the private sector, since studies show government on the average spends twice as much to do the same job. We must look at "deconsolidation" to save money, as consolidation usually creates a new level of bureaucracy. We should offer rewards to government workers and agencies that find ways to use government money more efficiently.

Handling prison growth?

Kottel: We need to look at developing community corrections programs for non-violent offenders rather than sentencing them to prison. We must distinguish criminal behavior that is related to chemical dependency issues from those with thinking errors and provide the necessary treatment and penalty. The state needs to make sure violent offenders who prey on vulnerable populations serve a full sentence. Funding aggressive early-intervention programs for high-risk children is important, so we can begin to short-circuit the increased flow into our system.

Balyeat: We need prison reform that includes requiring appropriate work for inmates to help offset costs of incarceration. That will make it so prisons aren't so pleasant. We need alternative community-based rehabilitation programs and facilities for prisoners convicted of non-violent crimes. They should have humane and safe living conditions but few amenities in order to discourage recidivism. I also believe in the appropriate use of the death penalty for murderers. New corrections facilities must be approved by voters in communities where they are proposed.

Key issues in district, and why qualified?

Kottel: Crime and economic development are two key issues. This term, if elected, I will carry a bill on telecommunications fraud. I successfully carried five bills last legislative session. One of those bills now requires lifetime registration for sex offenders. I am committed to the community and am an extremely hard worker.

Balyeat: I. The value of the fami-

ly, since a strong family is the ultimate deterrent to social problems. I've been successfully married for 19 years and have seven children; I can lead by example. 2. Freedom, which provides opportunity. 3. Economic issues. We need the opportunity to sustain or improve our property and possessions. Northside residents will appreciate my experience, expertise and common sense. 25 years of successful small business, a degree in business management and a common-sense approach to lean fiscal budgeting.

Deborah Kottel

■ Office seeking: House District 45

■ Party: Democratic

■ Salary: During session,

\$58 49 a day, plus living expenses

■ Age: 44, born June 16, 1952, in Gary, Ind.

■ Home: 6301 43rd St. S.W.

■ Career: Dean, College of Professional Studies, University of Great Falls, where she teaches paralegal studies. Taught law in Chicago until 1987.

■ Education: Bachelor's degree from Loyola University and law degree from DePaul University.

■ Political experience: Seeking second term

■ Family: Son, Drew, 9



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Senate, House debates to be televised

BILLINGS (AP) - C-SPAN, the public affairs TV network, has announced it will televise nationally two upcoming debates between Montana's candidates for the U.S. Senate and the U.S. House.

Congressional candidates Rick Hill and Bill Yellowstone are scheduled to debate Monday before an audience at the Alberta Bair Theatre in Billings.

Senate candidates Max Baucus and Dennis Rehberg are scheduled to follow.

The candidates will be questioned by a panel of reporters from The Billings Gazette, the sponsor of the program.

C-SPAN provides live coverage of Congress and a variety of national public affairs programming to cable subscribers.

The state is required by the Constitution to provide its share of school funding. Let's assume that 80 percent of the general fund of a school district is the state's responsibility. Rather than using the property tax to meet that responsibility, the

a replacement-cost department should be required to have people, not computers, do appraisals. What can state government do to create jobs and promote economic development?

one; can balance an accelerated spending budget to increase the tax rates which in turn increase the percentage of a person's wages that go toward supporting government outlays. This is wrong. Wadsworth: My background con-

tain system is developed and suitable structure and organization. Handling prison growth. Simpkins: We have released criminals from prisons because they are

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Rehberg closing gap with Baucus, poll finds

HELENA (AP) - Republican U.S. Senate candidate Dornis Rehberg could be gaining on Democratic Sen. Max Baucus, a new poll indicates.

The Lee Newspapers Poll, taken Oct. 18-21, found Baucus with 46 percent of the vote and Rehberg with 41 percent.

A Montana State University-Billings survey taken last weekend, also indicated Rehberg may be picking up support. It had Baucus with 45 percent of the vote and Rehberg with 38 percent. Two other independent polls taken within the last month both found Baucus with a wider lead, 51 percent to 37 percent.

The Lee poll questioned 801 registered voters and has a margin of error of plus or minus 3.5 percentage points.

Twelve percent of voters said they were undecided. Reform Party candidate Becky Shaw was favored by 1 percent of those polled, and Natural Law Party candidate Steve

Heston's showing was less than 1 percent.

Since the earlier polls, Rehberg has used campaign ads that attack Baucus as "wishy-washy" on major issues, and for getting expensive haircuts at a chic Washington salon. Other ads have featured popular Republican Gov. Marc Racicot praising Rehberg as a family man.

Baucus has responded with ads accusing Rehberg of negative campaigning and violating his own oath for a clean campaign.

Thirty-eight percent of the 401 women polled favored Rehberg, compared with 30 percent in the last Lee poll. Baucus had support of 50 percent of the women, down from 60 percent in September. Eleven percent of the women remained undecided.

Rehberg continued to have the support of 44 percent of the men in the Lee poll, the same as he did in a September Lee poll, while Baucus was holding at 42 percent with men.

Thirteen percent of the male vote is undecided.

In areas of the state, Baucus was ahead of Rehberg 44 percent to 39 percent in eastern Montana, with 17 percent undecided.

In the Great Falls-Helena area, Rehberg led 47 percent to 43 percent, with Shaw at 1 percent and 9 percent undecided.

In the Butte-Helena-Bozeman area, Baucus topped Rehberg 48 percent to 38 percent, with 13 percent undecided and Shaw at 1 percent.

In the Missoula-Kalispell area, Baucus edged Rehberg by 46 percent to 43 percent, with 10 percent undecided and 1 percent for Shaw.

Hill has edge over Yellowtail in poll

HELENA (AP) - A poll finds Republican Rick Hill edging Democrat Bill Yellowtail in the race for Montana's lone seat in the U.S. House.

Forty-seven percent of the people questioned in the poll Oct. 18-21 said they support Hill, and 42 percent backed Democrat Bill Yellowtail. One percent supported James Brooks of the Natural Law Party, and 10 percent were undecided.

The poll by Political/Media Research Inc. of Washington, D.C., has a margin of error of 3.5 percentage points. The statewide poll of 801 people who said they are registered to vote was conducted for the Lee Newspapers of Montana.

Voters were asked whether they would cast ballots for Hill, Yellowtail or Brooks if the election took place today.

The results show a shift from a poll taken for Lee a month ago. That survey, conducted Sept. 20-23, found Hill and Yellowtail about even.

The latest poll suggests Hill has made a significant gain among women voters, while Yellowtail's popularity among women has been stagnant. His gain among men did not approach Hill's gain among women.

Of the 401 women polled, 48 percent said they would vote for Yellowtail, compared with 49 percent in the last poll. Among men, 36 percent said they would vote for Yellowtail, compared with 29 percent a month ago.

Hill gained nearly 20 points among women in the last month.

In September, 24 percent of women said they would vote for Hill. This month, 42 percent said they would vote for him.

Of 400 men who were polled, 36 percent would vote for Yellowtail, up 32 percent favor Hill. Last month, 48 percent of men said they favored Hill, and 29 percent supported Yellowtail.

Geographically, the poll finds Hill with a very slight lead in the eastern Montana, Billings, Great Falls and Missoula regions, and Yellowtail ahead in the Butte and Helena areas.

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